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**Substitute for form 1449A/PTO**

## **INFORMATION DISCLOSURE STATEMENT BY APPLICANT**

*(Use as many sheets as necessary)*

 <b>Substitute for form 1449A/PTO</b> <b>INFORMATION DISCLOSURE</b> <b>STATEMENT BY APPLICANT</b> <i>(Use as many sheets as necessary)</i>		<b>Complete if Known</b>	
		Application Number	10/696,543
		Filing Date	October 28, 2003
		First Named Inventor	Edward Jonathan Brush
		Art Unit	3629
		Examiner Name	
Sheet	2	of	2
		Attorney Docket Number	

## **NON PATENT LITERATURE DOCUMENTS**

Examiner Signature		Date Considered	
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

**1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.**

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS ("Covenants") is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_, by Victoria Place, LLC, a Florida limited liability company, its successors and assigns ("Declarant"), and is joined in by The Ellington Homeowners Association, Inc., a Florida corporation not for profit ("Association")

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant is developing a community to be known as "The Ellington" ("Community") on the Property; and

WHEREAS, Declarant desires to grant to Brenner Real Estate Group, a licensed real estate broker ("Broker"), certain rights and easements with respect to the Property and the Community; and

WHEREAS, the Association is the entity which shall be responsible to administer the Community once it has been declared by the recording of the Declaration of Covenants, Restrictions and Easements thereof ("Declaration") in the Public Records of Broward County, Florida; and

WHEREAS, the Association is joining in these Covenants in order to acknowledge its obligations to Broker hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations and burdens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**ARTICLE I**  
**DEFINITIONS**

The terms used in these Covenants shall be defined as set forth herein unless expressly provided otherwise.

Section 1. "Home" shall mean a residential dwelling unit constructed within The Ellington which is designed and intended for use and occupancy as a single-family residence.

Section 2. "Legal Fees" shall mean reasonable fees for attorney and paralegal services incurred in connection with negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and postjudgment

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proceedings, and shall also include court costs through and including all trial and appellate levels and postjudgment proceedings.

## ARTICLE II BROKER'S RIGHTS

Declarant hereby grants to Broker and its successors and assigns the following rights with respect to the Property, and the Property shall be held, used, and enjoyed subject to such limitations and restrictions:

Section 1. Broker shall have the exclusive right to list for sale every Home in the Community for a period of five (5) years as to each Home, commencing with the date of recording the Declaration ("Term"). Every owner of a Home ("Owner"), by acceptance of title to a Home by deed or other instrument of conveyance from Declarant, thereby acknowledges this obligation imposed upon his/her Home.

Section 2. Broker shall have a non-exclusive easement over, through and across the Community for the purpose of conducting sales, resales and related marketing activities for Homes in the Community. Such easement shall include the right to use all guest parking spaces, on a non-exclusive basis. Such easement shall also be for the use of Broker's employees, customers, agents, invitees, successors and assigns.

Section 4. Broker shall have an easement to place signs on the Association Property within the Community advertising its business, provided, however, the design, size and placement of any such signs shall be subject to the approval of the Association, which approval shall not be unreasonably withheld. Once granted by the Association, such approval may not be withdrawn. Failure of the Association to object to any signage placed by Broker within fifteen (15) days of the existence of such signage shall be deemed approval.

Section 5. Broker shall the right to assign any and all of the rights and privileges granted to Broker under these Covenants, in whole or in part.

## ARTICLE III SALES COMMISSIONS

Section 1. Broker shall be entitled to a sales commission of five and one-half percent (5.5%) of the total purchase price for each Home which it lists and sells during the Term.

Section 2. Broker shall be entitled to a sales commission of two and three-quarters percent (2.75%) of the total purchase price for each Home which is listed and/or sold by another broker during the Term.

Section 3. In the event an Owner enters into a contract to sell his or her own Home during the Term without the services of a broker or otherwise conveys his or her Home during the Term without the services of a broker, Broker shall not be entitled to any sales commission.

Section 4. In the event an Owner enters into a contract to sell his or her own Home during the Term, under which contract the purchaser of said Home pays all or any portion of a broker's commission, it will be assumed that such scheme is meant to avoid or reduce Broker's commission and the total purchase price of the Home shall be recalculated in order to reflect Broker's true commission hereunder.

Section 5. On or before the closing of a sale of a Home wherein the Owner represents that no broker has been used and no commission is due Broker, the selling Owner and the purchaser of the Home shall both sign an Affidavit in the form as attached hereto as Exhibit B and made a part hereof, attesting to same.

#### ARTICLE IV ASSOCIATION'S OBLIGATIONS

Section 1. Association shall not amend the Declaration in any manner that is discriminatory against Broker or which interferes with Broker's business, nor shall Association allow any activity within the Community which unreasonably interferes with Broker's business. Broker shall be entitled to injunctive relief for any actual or threatened interference with its rights hereunder, in addition to whatever other remedies at law to which it might be entitled.

#### ARTICLE VI GENERAL PROVISIONS

Section 1. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid to: (i) Declarant, certified mail, return receipt requested, at 1000 East Hillsboro Boulevard, Suite 100, Deerfield Beach, Florida 33441, or such other address as Declarant shall notify Association and Broker in writing; (ii) Association, certified mail, return receipt requested, at 1000 East Hillsboro Boulevard, Suite 100, Deerfield Beach, Florida 33441, or such other address as Association shall notify Declarant and Broker of in writing; and (iii) Broker, certified mail, return receipt requested, at 1000 East Hillsboro Boulevard, Suite 100, Deerfield Beach, Florida 33441, or such other address as Broker shall hereinafter notify Declarant and the Association of in writing.

Section 2. The covenants and restrictions herein contained may be enforced by Declarant, the Association or Broker in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees.

Section 3. Article captions, headings and titles inserted throughout these Covenants are intended as a matter of convenience only and in no way shall such captions, headings or titles

define, limit or in any way affect the subject matter or any of the terms and provisions hereunder or the terms and provisions of these Covenants.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 4. In the event any of the provisions of these Covenants shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of these Covenants deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law.

Section 5. These Covenants shall terminate five (5) years from the date the Declaration is recorded, or earlier in Broker's sole discretion, pursuant to an instrument of termination recorded by Broker in the Public Records of Broward County, Florida.

Section 6. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Home consents and agrees to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these Covenants is contained in the instrument by which such person acquired an interest in such property. Declarant shall not in any way or manner be held liable or responsible for any violation of these Covenants by any person other than Declarant.

Section 7. All provisions of these Covenants shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Property and the Homes created thereon, if any, and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of the Declarant, Association and Broker, and subsequent Owner(s) of the Homes and the Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. Any future Owners shall be subject to and shall comply with the provisions of these Covenants as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Home shall constitute an adoption and ratification by the Owner of such Home of the provisions of these Covenants as they may be amended from time to time. In the event that any rights granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

IN WITNESS WHEREOF, these Covenants have been signed by Declarant and joined in by the Association on the respective dates set forth below.

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DECLARANT:

WITNESSES AS TO DECLARANT:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

WITNESSES AS TO ASSOCIATION:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

VICTORIA PLACE, LLC, a Florida limited liability company

By: ZAM-Victoria Place, Inc., a Florida corporation, its Manager

By: Scott F. Brenner, President

(SAL)

ASSOCIATION:

THE ELLINGTON HOMEOWNERS  
ASSOCIATION, INC, a Florida corporation not for profit

By: Scott F. Brenner, President

Attest: Brian Horowitz, Secretary

(SAL)

STATE OF FLORIDA      )  
COUNTY OF BROWARD    ) SS

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I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by SCOTT F. BRENNER, the President of ZAM-Victoria Place, Inc., a Florida corporation, the Manager of VICTORIA PLACE, LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission Expires:

\_\_\_\_\_  
Typed, Printed or Stamped Name of Notary Public

STATE OF FLORIDA      )  
COUNTY OF BROWARD    ) SS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Scott F. Brenner and Brian Horowitz, the President and Secretary, respectively, of THE ELLINGTON HOMEOWNERS ASSOCIATION INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in them by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation. Scott F. Brenner is personally known to me or has produced \_\_\_\_\_ as identification. Brian Horowitz is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission Expires:

\_\_\_\_\_  
Typed, Printed or Stamped Name of Notary Public

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JOINDER OF BROKER

Broker, Brenner Real Estate Group, hereby joins in and consents to the foregoing Declaration of Covenants, Restrictions and Easements.

WITNESSES:

BRENNER REAL ESTATE GROUP, a  
licensed real estate broker

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF FLORIDA      )  
                            )  
COUNTY OF BROWARD    )  
                            )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, the \_\_\_\_\_ of BRENNER REAL ESTATE GROUP, a licensed real estate broker, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

EXHIBIT A

Legal Description of Property

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EXHIBIT B

Form of Affidavit

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who  
and \_\_\_\_\_  
being by me first duly sworn, on oath, depose and say:

1. That \_\_\_\_\_ ("Owner") is the owner of Home  
designated as \_\_\_\_\_ in The Ellington, according to the Declaration of Covenants,  
Restrictions and Easements thereof, as recorded in Official Records Book: \_\_\_\_\_, Page  
\_\_\_\_\_, of the Public Records of Broward County, Florida ("Residence").

2. That \_\_\_\_\_ ("Purchaser") is purchasing the Home  
from Owner, pursuant to a Purchase Contract executed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_\_\_\_\_.

3. That Owner and Purchaser agree that no real estate broker is involved in  
the transaction pursuant to which Owner is selling the Home to Purchaser.

Further affiants sayeth naught.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Purchaser

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_,  
before me, an officer duly qualified to take acknowledgements, personally appeared  
and \_\_\_\_\_, who are personally known  
to me or who have produced Florida drivers' licenses as identification.

My commission expires:

\_\_\_\_\_  
Notary Public  
Printed, typed or stamped name: